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No. 426

IN THE

Supreme Court of the United States

OCTOBER TERM 1948

WORLD PUBLISHING COMPANY, A CORPORATION, PETITIONER,

vs.

UNITED STATES OF AMERICA, RESPONDENT.

PETITION FOR REHEARING

MORRISON SHAFROTH,
730 Equitable Building,
Denver, Colorado,

BYRON V. BOONE,
914 World Building,
Tulsa, Oklahoma,

Attorneys for Petitioner.

Of Counsel:

W. W. GRANT,
HENRY W. TOLL,,
WILLIAM GRANT,,
DOUGLAS MCHENDRIE,

730 Equitable Bldg.,
Denver, Colo.

FEERLESS PRINTING COMPANY, DENVER

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The present "leaden footed" process of finding out what a tax law means, brings uncertainty, injustice and discredit to government and taxpayer alike. The process is aptly described in a note to Mr. Justice Jackson's decision in *Dobson v. Commissioner,* 320 U. S. 489, 500, 88 L. ed. 248, 255, wherein he quotes from Magill's "Impact of Federal Taxes" as follows:

"At the present time, it is impossible to obtain a really authoritative decision of general application upon important questions of law for many years after the close of any taxable year. The average period between the taxable year in dispute and a Supreme Court decision relating thereto is nine years. Meanwhile confusion reigns in the day-by-day settlement of the more debatable questions of the tax law. One circuit court holds that a certain situation gives rise to tax liability; another circuit holds the contrary. The Commissioner and the lower federal courts are both confronted with the problem of reconciling the irreconcilable. * * *"

In the court's decision in the *Dobson* case *(supra)* the high competence of the Tax Court in problems of taxation is forcefully presented (p. 498-500):

"* * * Its deliberations are evidenced by careful opinions. All guides to judgment available to judges are habitually consulted and respected. It has established a tradition of freedom from bias and pressures. It deals with a subject that is highly specialized and so complex as to be the despair of judges. It is relatively better staffed for its task than is the judiciary. Its members not infrequently bring to their task long legislative or administrative experience in their subject. The volume of tax matters flowing through the Tax Court keeps its members abreast of changing statutes, regulations, and Bureau practices, informed as to the background of controversies and aware of the impact of their decisions on both Treasury and taxpayer. * * *

"Tax Court decisions are characterized by substantial uniformity. Appeals fan out into courts of appeal of ten circuits and the District of Columbia. * * *

"To achieve uniformity by resolving such conflicts in the Supreme Court is at best slow, expensive, and unsatisfactory. Students of federal taxation agree that the tax system suffers from delay in getting the final

word in judicial review, from retroactivity of the decision when it is obtained, and from the lack of a roundly tax-informed viewpoint of judges."

In the pending case it seems impossible to dispute that the interpretation of the statute involved, adopted by the Tax Court in a line of decisions the most recent of which is *J. L. Goodman Furniture Co. v. Commissioner,* 11 Tax Court (Sept. 30, 1948), would require an opposite result to that reached by the District and Circuit Courts in this case.

In a comment on the case in 1949 C.C.H., Par. 8903.03, p. 11,635, it is said:

"Perhaps the most significant aspect of the *World Publishing Co.* petition lies in a comparison of the lower courts' opinions with recent Tax Court decisions under Sec. 102 (summarized at Par. 8903.03 below). In the Tax Court opinions, emphasis is placed upon actual use of the accumulations for the purposes stated, or a satisfactory showing that they would be so used. In the cases where such showings have been made, the Tax Court has uniformly held that the taxpayer was not liable for the Sec. 102 surtax. In the *World* case, however, the surtax was imposed even though the proposed expansion and replacement of equipment had actually been contracted for at the time of trial in an amount far exceeding the original estimated costs. The decision appears to have been based almost entirely upon conditions as they existed at the time of the accumulations, with little apparent weight given to the corroborative effect of later transactions. Conceivably, therefore, an affirmance by the Supreme Court in the *World* case could change the entire course of Tax Court decisions dealing with Sec. 102 surtax liability."

That the Supreme Court will eventually have to determine the correct interpretation of the law, seems inevitable. In the meantime taxpayers will be harrassed,

business impeded, the injustices of tax uncertainties piled up, and the administration of the law by the Bureau and the courts correspondingly discredited.

We respectfully, but earnestly urge that it is in the public interest that the question be decided in this case.

Respectfully submitted,

MORRISON SHAFROTH,
730 Equitable Building,
Denver, Colorado,

BYRON V. BOONE,
914 World Buliding,
Tulsa, Oklahoma,

Attorneys for Petitioner.

Of Counsel:

W. W. GRANT,
HENRY W. TOLL,
WILLIAM GRANT,
DOUGLAS MCHENDRIE,

730 Equitable Bldg.,
Denver, Colo.

CERTIFICATE

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and that the Petition is restricted to grounds not previously presented.